

REMARKS

Claims 1, 5-6 and 9-19 are pending. Applicant elects with traverse Group II and SEQ ID No: 1 for examination on the merits. Claims 1, 5-6 and 9-15 read on the elected species. Applicant reserves the right to prosecute nonelected subject matter in a further patent application.

The amendments are fully supported by the original disclosure and, thus, no new matter is added by their entry. In addition to new claims based on original claims, the subject matter of claims 5 and 11 is supported by the original disclosure at page 7 (see Example 1). The subject matter of original claim 10 is canceled because it duplicates the scope of original claim 9. Claims 16-19 are directed to a drug/gene eluting stent comprising a surface layer containing a gene encoding a hybrid polypeptide, wherein the hybrid polypeptide comprises an FNCBD polypeptide and an HGF.

Notwithstanding the above election, reconsideration of the restriction requirement is requested because examination of all pending claims would not constitute a serious burden. Although the inventions identified by the Examiner are separately patentable, both the need for compact prosecution and the public interest would be served by examination of all claims in a single application. In particular, the claims of both Groups I and II should be examined in the same application. Thus, claims 1 and 5-6 should not be withdrawn from consideration.

In the alternative, Applicant disagrees with the allegation in the Action that claims 1, 5-6 and 9-15 lack unity of invention, and therefore belong to different groups of inventions. Although Applicant agrees with the Examiner that the inventions are separately patentable, this traversal is based on claims 1, 5-6 and 9-15 being so linked as to form a single general inventive concept under PCT Rule 13.1. The special technical feature linking claims 1, 5-6 and 9-15 is a drug/gene eluting stent comprising a surface layer containing a gene encoding a hybrid polypeptide, wherein the hybrid polypeptide comprises an FNCBD polypeptide and an N-terminal deleted MCP-1 as required by claims 1 and 9. Therefore, Applicant submits that claims 1, 5-6 and 9-15 should be examined together in this application.

Applicant submits that, pursuant to the *Manual of Patent Examining Procedure* (M.P.E.P.), the claims identified by the Examiner as Groups I and II are linked to form a

single general inventive concept. In particular, the Examiner's attention is directed to M.P.E.P. § 1850 III A Combinations of Different Categories of Claims (8th Ed., Rev. 5, August 2006), which states at 1800-96 to 1800-97:

The method for determining unity of invention under Rule 13 PCT shall be construed as permitting, in particular, the inclusion of any one of the following combinations of claims of different categories in the same international application:

(A) In addition to an independent claim for a given product, an independent claim for a process specially adapted for the manufacture of the said product, and an independent claim for a use of the said product . . .

[A] process shall be considered to be specially adapted for the manufacture of a product if the claimed process inherently results in the claimed product with the technical relationship being present between the claimed product and claimed process. The words "specially adapted" are not intended to imply that the product could not also be manufactured by a different process.

It was alleged in the Action that the inventions listed by the Examiner as Groups I and II do not relate to a single general inventive concept because they lack the same or corresponding special technical features under PCT Rule 13.2. But the special technical feature described above links claims 1, 5-6 and 9-15. In accordance with the section of the M.P.E.P. quoted above, (i) claims 1 and 5-6 are directed to a product (i.e., the drug/gene eluting stent) and (ii) claims 9-15 are directed to a method for using the product.

Accordingly, Applicant submits that there is no lack of unity with regard to claims 1, 5-6 and 9-15. Applicant requests that those claims be examined together in this application. Applicant earnestly solicits an early and favorable examination on the merits. The Examiner is invited to contact the undersigned if any further information is required.

Respectfully submitted,

NIXON & VANDERHYTE P.C.

By: _____

Gary R. Tanigawa
Reg. No. 43,180

901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100